

UNITED STATES GOVERNMENT

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

FINTECH PRECAST, INC.

Employer

and

Case 20-RC-17899

INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL, ORNAMENTAL AND
REINFORCING IRONWORKERS, MACHINERY
MOVERS & RIGGERS LOCAL 118, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a California corporation with a place of business in Redding, California, is engaged in the business of fabricating and

erecting concrete wall panels and floor planks. During the 12-month period preceding the hearing in this case, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from sources located outside the State of California. Based on the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. No party contends that there is a history of collective bargaining for the Employer.

5. The Petitioner seeks to represent a unit comprised of all full-time and regular part-time field ironworkers and crane operators employed by the Employer; excluding all managerial and administrative employees, drivers, office clerical employees, guards and supervisors as defined in the Act. The petitioned-for unit consists of approximately ten employees, including crane operators, riggers and welders, who work on crews that erect the pre-fabricated concrete panels produced by the Employer.

The Employer contends that the petitioned-for unit is inappropriate and that in order to be an appropriate unit, plant production employees must also be included in the unit with the erection crew employees. The unit which the Employer contends is appropriate consists of about forty-three employees.

The parties also dispute whether the two foremen that head the erection crews are statutory supervisors under the Act. The Employer contends that they are statutory supervisors and the Petitioner takes the opposite position.

Stipulations. The parties stipulated, and I find, that the following individuals are statutory supervisors: General Manager Kevin Steinkraus, Plant Managers Darin Beaver and Brad Graham, and Quality Control Manager Jeff Hatchery.

Background. The Employer manufactures precast concrete panels and floor planks that are poured in an assembly-line process at its Redding plant. The finished products are transported to jobsites by an independent contractor where they are erected by the Employer's field crews at construction sites. At the time of the hearing, the Employer had two erection crews, each with three or four employees, including a crane operator, welders and riggers. Each crew is headed by a foreman. Because of varying project demands, there have been brief periods when the Employer has utilized three crews and also periods when the crews are combined into a single crew. The crews work at jobsites as far north as Eugene, Oregon; as far south as Riverside, California; as far east as Elko, Nevada; and west to the California and Oregon coast.

The employees working on the two crews at the time of the hearing were identified by Plant Manager Brad Graham as Crew Foremen Gerry Green and Dave Linson, Crane Operator Fred Thomas Mitchell, Riggers Curtis Alexander and Keith Peterson, and Welders Charles Blalack, Tyson Lakey, Tim McDowell, Mike O'Callaghan, and Nicholas Gannon.

Foremen Green and Linson are working foremen. Although the record does not disclose what percentage of their time they spend doing the same type of work as other crewmembers, it is clear that Linson drives the crane to the site and that each of them operates a crane if the regular crane operator, Fred Mitchell, is not on the crew. They also perform rigging, welding and finishing work, as described below, along with other crewmembers. They report directly to General Manager Kevin Steinkraus, who schedules the work of the crew.

The erection crews meet at the plant at 6 a.m. on Monday mornings and usually drive to the jobsite together in an Employer vehicle. Depending on the proximity of the jobsite to Redding, crewmembers may also drive their own vehicles to the jobsite and they either drive directly home at night or stay in a motel. The erection crews work four ten-hour days, Mondays through Thursdays. Crewmembers receive a per diem allowance, which varies depending on whether the project is private or a public works project. Unless they are assigned to work at the plant during a period when erection work is slow, crew members spend very little time at the Employer's plant, going there only on Monday mornings prior to departing for a jobsite, and on Fridays to pick up their paychecks. There is no showing that the crews participate in any meetings or social gatherings with employees working at the plant. Safety meetings for the erection crews are conducted by the crew foremen. The plant managers conduct separate safety meetings for plant employees.

As indicated above, Foreman Linson drives the truck to transport the crane to the jobsite. At the jobsite, either the crew foreman or one of the crewmembers handles the preparation of the layout for the job. Using a fifty or sixty ton hydraulic crane, the crane

operator unloads the concrete panels from the truck of an independent contractor that has delivered them to the jobsite. The panels weigh between 3,000 and 29,000 pounds. The crane operator lifts, tilts and positions the panels, and sets them into place on the construction site with the assistance of one or two riggers who strap the panels and help direct their movements. As indicated above, the crane is always operated by Fred Mitchell or one of the foremen, and rigging work is usually performed by Curtis Alexander or Keith Peterson, although all employees on the crew help with rigging and other tasks.

After a panel is set into position, the welders¹ weld it into place, by welding the panel to foundation connections and panel-to-panel connections. This type of welding requires a certification called a fillet welding certification. After the panels have been erected, the crew performs finishing work, which includes grouting, patching and cleaning work. All members of the erection crew assist in such work. The record shows that while most of the time the erection crew completes all of the work on the job, there have been occasions when the crew does not have time to complete the finishing work because it is scheduled to begin another job. In such instances, the crew foremen telephone the plant managers and ask for assistance, and the plant managers either provide the assistance themselves or send one or two plant employees, (usually laborers, plant welders and, on occasion, a machinist) to the jobsite to complete the finishing work. In this regard, Plant Manager Graham testified that he generally

¹ The welders include the two crew foremen who work as welders, and Charles Blalack, Tyson Lakey, Tim McDowell and Mike O'Callaghan.

goes to the jobsite to do work since he has more experience and skill than do the plant employees.²

The record includes a listing of all employees in different job classifications that the Employer contends should be included in the unit. These classifications include three crane operators, three machine operators, eight welders, three cement finishers, three fab-mold employees, seven mold set-up employees, two quality control employees, and fourteen laborers. The Employer also has employees who work as riggers both on the job and in the plant, whom it also contends must be included in the unit.

According to Plant Manager Graham, none of the cement finishers, fab-mold or mold set up employees have ever worked at a jobsite. Fred Mitchell is the only one of the three crane operators who has ever operated a crane at a jobsite. Only one of the two quality control employees had ever been to a jobsite and that was to inspect a site where a problem existed.

The documentation in the record reflects that in 2003, approximately thirty-five employees who were not regular crewmembers were dispatched to jobsites; in 2002, approximately thirty such employees were dispatched; and in 2001, approximately eighteen such employees were dispatched to work at jobsites. From the testimony in the record, it appears that the employees that have been dispatched are usually laborers who perform finishing work so that the crews can move on to a new job, and that often the crews are no longer on the jobsite when the plant employees arrive to handle the finishing work.

² Graham testified that he has gone to work at jobsites about 20 to 30 times since he began working for the Employer about six and a half years ago.

With regard to individual plant employees who have worked on jobsites, the record shows that certain employees, such as Rigger Keith Peterson and Welder Kyle Beaver, have spent substantial amounts of time working on both the field crews and in the plant.³ Plant Manager Graham testified that one of the plant machine operators, James Windle, had been dispatched to a jobsite to perform work, the nature of which was not disclosed in the record.⁴ The record also indicates that Plant Welder Nemecio Romo and Laborers Sergio Llanas, Jason Wehunt and the two sons of Foreman Green have worked on field crews and in the plant.⁵

The record shows that on one job in 2001-2002, called Central Point in Oregon, the Employer dispatched approximately 18 employees who were not regular crew members to work at the jobsite over the course of the year that the Employer worked on the project. Central Point was a large project that involved the construction of a high school and the Employer encountered significant delays in its work because of design errors that affected the fabrication of the panels. As a result of such errors, the Employer had to send plant employees out to the project to fix the panels. In charge of that project were Crew Foremen Linson and Green. One of the plant managers, Brad Graham, also worked on that job.

³ Thus, Peterson spent about fifty days working in the plant in 2003. With regard to Kyle Beaver, who is the son of Plant Manager Beaver, the record shows that he worked in the plant doing panel production for about 23 days in January and February 2003, seven days in May 2003, and five days in September 2003. He also worked on field crews for about five days in February 2003, 13 days in March 2003, and four days in April 2003. The documentation for 2002 shows a similar pattern for Beaver.

⁴ The documentation in the record shows that Windle worked on a project for two days in December 2002.

⁵ No party contends that these individuals should be excluded from the unit based on their family relationship to Green or Beaver and there is nothing in the record to warrant any conclusion that they should be excluded on that basis.

Plant Work Performed By Crew Members. The Employer attempts to ensure the continued availability of its regular erection crewmembers by offering them plant work when work in the field is slow. Erection crewmembers can also choose to be laid off or work for other employers during such periods. If they choose to work in the plant, the erection crew members do not bump plant employees and they are paid at the same pay rate as they are paid in the field. They also maintain the same four-day-a-week, ten-hour-a-day schedule, unlike the plant employees who work a Monday through Friday, eight-hour-a-day schedule.

Witnesses at the hearing included Erection Crew Foremen Linson and Green, Erection Crew Crane Operator Fred Mitchell, and regular Erection Crew Welders Charles Blalack and Tim McDowell. Their testimony reflects that while they spend most of their time working on the erection crew, they have also had experience working in the plant. Thus, Crane Operator Mitchell had previously worked in the shop operating cranes for three years before becoming a crane operator in the field about two years ago. According to Mitchell, recently he has only worked in the shop to repair and maintain the cranes. When he does so, he is assisted by a machinist in the plant.

Welder Charles Blalack had worked in the plant pouring molds and performing other in-plant work for a couple of months prior to becoming a member of the erection crew approximately two years ago.⁶ In the past year, Blalack has worked in the plant for about three days when field work was slow, digging trenches for a fire hydrant and welding the molds used

⁶ The documentation in the record shows that Blalack performed plant work (i.e., panel production work) for at least 11 days in 2001.

in the production of panels. According to Blalack, he had chosen to be laid off the other days when work was slow during the past year.

Timothy McDowell, another regular member of the erection crew, started work for the Employer in May 2001. According to McDowell, he was working in the field the day he started with the Employer and has been a regular member of the erection crew since his hire. McDowell testified that the first year he worked on the field crew he worked as a rigger and then he obtained his welding certification for fillet welding and he has performed welding work on the crew since that time. According to McDowell, 90% of his work on the crew is welding and 95% of the welding is fillet type welding. He also spends about 5% of his time rigging and 5% performing patchwork. The Employer paid for McDowell's fillet welding certification. McDowell has never welded rebar at the shop. However, he testified that about five or six months after he started work in 2001, he worked in the plant scraping the floor and "mucking," which he described as smoothing the wet concrete with a rack. According to McDowell, in the year prior to the hearing, he had worked in the shop a total of about a month doing strand-cutting work which was taught to him by a plant foreman.

Although he did not testify at the hearing, the record shows that one of the regular crewmembers, Rigger Keith Peterson, has worked at the shop for significant periods when there have been layoffs during the past year. Thus, during calendar year 2003, Peterson spent about fifty days working in the plant.

The Employer's Plant Operation. The Employer's plant operation is headed by General Manager Kevin Steinkraus. Plant Managers Darin Beaver and Brad Graham report directly to

Steinkraus. Reporting to Beaver and Graham are a plant foreman and a yard foreman. The plant employees manufacture concrete panels in an assembly-line type process. Welders use rebar to create supports inside a metal mold into which the concrete is poured to form the panels. The certification for doing this type of welding is called a rebar certification.⁷ Welders also work with mold-set up, fab-mold and laborer employees to pour cement into the mold. After the cement has hardened, the panel is removed and laborers patch or repair imperfections in the panels. Laborers also grind concrete and clean the reusable metal molds. The crane operator moves the panels into the yard and stacks them for storage until they are needed on a job. When the panels are ready to be sent to a jobsite, the crane operator loads them onto the truck of an independent contractor used by the Employer to transport them to the jobsite. The cranes used at the Employer's plant are different from those used by the erection crews in the field. At the plant, the Employer uses a Mijack mobile bridge crane and a 75-ton P&H hydraulic crane.⁸ On jobsites, the Employer utilizes a 50-ton Grove crane and a 60-ton Link-Belt crane. Rigging work at the plant yard consists of assisting the crane operator by rigging the panels with four-way cable slings and straps and assisting in the stacking and loading process.

As indicated above, according to the plant manager, none of the employees in the classifications of cement finishers, fab-mold or mold set-up employees have ever been to a jobsite. On the other hand, the record shows that a substantial number of plant employees,

⁷ Plant manager Graham testified that Plant Welders Fernando Romo and Wayne Erickson have rebar certifications.

⁸ The record indicates that the P&H crane has been out of service for the past year.

mostly laborers, a few welders and a machinist, have been sent to jobsites to do finishing work for the crews.

Plant employees work eight hours a day, Monday through Friday. As indicated below, the record does not disclose the pay rates for employees other than the laborers. The plant employees do not receive the per diem allowance paid to the field crew. Plant employees have the same benefits as do the crew members with the exception of the foremen.

All employees have the same Employer handbook and are apparently subject to the same Employer rules.

Training, Certifications and Job Functions. While the Employer pays for employees to obtain welding certifications, it does not utilize a formal apprenticeship program and there is no evidence that it conducts any formal training in-house or on a contract-out basis. Nor does it appear that it has rigid qualifications for hiring. Rather, it appears that employees are either hired with experience and skills or they learn the skills from their foremen and co-workers while on the job. Whether an employee works on the erection crew appears to be controlled by the employee's interest and abilities, with some employees preferring not to be on the crew because it requires them to work out of town.

Both the plant and the field crew include the classifications of crane operator, welder and rigger. As indicated above, the certifications required for crane operators and welders who work in the plant appear to be different from those required for the crane operators and welders who work on the erection crew. While plant welders have rebar welding certifications, erection

crew welders have fillet welding certifications. Thus, a distinction exists between the types of welding usually performed by the plant welders and the erection crew welders.

The work of the crane operators at the plant and at the jobsite appear less distinct as both use a crane to lift and load or unload the same panels. Thus, the plant crane operator stacks the panels and loads them to go to the jobsite and the crane operator at the site uses the crane to unload the panels and sets them into place on the jobsite. The differences in the certifications possessed by the crane operators appear to be based on the types of cranes they operate. Plant Manager Graham testified that Plant Crane Operator Danny Boban did have the necessary skills and abilities to run a crane in the field. However, Graham testified that neither of the plant crane operators had ever done so.

The work of the riggers at the plant and on the crew also appear to be similar. Thus, both strap the panels and assist the crane operator in guiding the panels as they are moved by the crane. It appears from the record that there are no special certifications required for the riggers.

The Erection Crew Foremen. As indicated above, Erection Crew Foremen Green and Linson are working foremen who perform crane operator, rigging and welding work. They are in charge of their respective crews and both acknowledged on the record that they handle any problems that arise while they are in the field and are responsible for ensuring that the job gets done. Green has a leadperson, Welder Charles Blalack, who assists him.⁹

⁹ Neither party contends that Blalack is a statutory supervisor and there is no evidence in the record to show that he is a statutory supervisor.

Green has worked for the Employer for the past six years, and has been working on the crew for approximately the past four years. He has rarely worked in the plant since he began working on the crew. Green testified that no one in management has ever informed him that he possesses the authority to hire employees. According to Green, he has never seen a job application and has never hired anyone.

The record reflects that in April 2003, Green sent one employee on his crew, Zach Houser, home from a jobsite. Green testified that Houser had engaged in horseplay during a week that the crew was working on a jobsite and had damaged motel property where the crew was staying. Green warned Houser about his conduct several times during the week but Houser continued. Then, according to Green, Houser started throwing rocks at co-workers on the jobsite and Green told him to go sit in the truck and would not let him continue to work. Green testified that he did so because Houser posed a safety hazard on the job. Although the record contains conflicting evidence as to whether Green was actually responsible for giving a written warning or suspending or terminating Houser, it is plain from the record that Green transferred Houser off his crew and made it clear that Houser was never to return. As I do not make findings based on credibility, I decline to make any finding regarding Green's supervisory status based on his asserted authority to suspend or to terminate or to recommend the termination of Houser. However, it is apparent from the evidence regarding this incident that Green has the authority to permanently take employees off his crew if he deems them a safety hazard.

With regard to Green's authority to effectively recommend wage increases, the record shows that Green filled out a performance review and wage reclassification for Welder Mike O'Callaghan on March 11, 2003. Green testified that he recommended a raise for O'Callaghan because he was being paid a dollar less an hour than the other welders on the erection crew and Green was concerned that O'Callaghan would quit and go to work for another employer. When Green approached General Manager Steinkraus with his recommendation that O'Callaghan be given a dollar raise, Steinkraus told Green to fill out a performance review and wage reclassification for O'Callaghan, apparently because such documentation was necessary before a raise could be granted. Green filled out a performance review for O'Callaghan, giving him ratings and stating that O'Callaghan was a "reliable, hard worker who deserves raise." Green's recommendation for the dollar raise was approved by Steinkraus and O'Callaghan was given the raise. Green testified that he has recommended pay increases on other occasions, such as for Welder Tim McDowell about eighteen months ago, but on that occasion, Steinkraus told him that the timing was not right.

There is no dispute that both Green and Linson decide when the erection crews start and stop work. Green testified that the crew often works twelve-hour days. However, the record indicates that the Employer does not pay overtime to its crew.¹⁰ The record does not show whether plant employees work any overtime.

¹⁰ Linson testified that the crew members sign contracts to work a four day a week, ten hour a day schedule without overtime.

Foreman Dave Linson. Linson has worked for the Employer for about nine years.

Until about six months prior to the hearing, he was the Employer's field supervisor and in charge of all crew work. As such he had been responsible for all the crews and had authority to hire and fire and had fired employees. Since he left the field supervisor job six months ago that position has been vacant. According to Linson, Steinkraus has informed him that he is still responsible for both crews although he now apparently stays at the jobsite where his crew is working.

Linson testified that since he was demoted to the position of field foreman six months ago, he has hired three employees (Curtis Alexander, Nicholas Gannon and Gerald Green III) on his own authority. In this regard, Linson testified that Curtis Alexander had worked for the Employer previously; Nicholas Gannon was an acquaintance of Welder Tim McDowell's and McDowell recommended him for hire; and Gerald Green III was the son of Foreman Green and Linson personally knew their family. Linson testified that when he decided to hire these employees, he consulted with Steinkraus about what pay rate to offer them since they had prior experience. According to Linson, he recommended paying them nine dollars an hour and Steinkraus approved that pay rate and they were hired at that rate.

Linson drives the crane to the jobsite and sometimes performs other welding or rigging work. He earns \$22 an hour, which is a dollar an hour more than the plant managers.

Wages & Benefits. The hourly wages of the foremen and the crew employees are as follows: Foreman Gerald Green, Jr. earns \$18 an hour; Foreman Linson earns \$22 an hour; Leadperson/Welder Charles Blalack earns \$15 an hour; Welder McDowell earns \$12 an hour;

and Welder Lakey earns \$11 an hour. The parties stipulated that welders who work in the field all earn between \$11 and \$15 an hour. Crane Operator Fred Mitchell receives \$14.75 an hour. The stipulated plant managers Darin Beaver and Brad Graham are hourly paid and earn approximately \$21 an hour. Laborers receive between \$8 and \$13 an hour regardless of whether they are working in the plant or on a jobsite. The record does not show what the other plant employees earn. Crew members receive a per diem allowance which plant employees do not receive.

All erection crew and plant employees receive the same benefits except that the foremen receive a different health plan, which is the same health plan as that of the managers and stipulated supervisors. All employees are apparently subject to the same Employer handbook.

Analysis. The Employer contends that the two erection crew foremen, Gerald Green Jr. and David Linson, must be excluded from the unit as statutory supervisors, and the Union takes the opposite position.

The term “supervisor” is defined in Section 2(11) of the Act as:

“[A]ny individual having authority, in the interest of the Employer-Petitioner, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

In order to support a finding of supervisory status, an employee must possess at least one of the indicia of supervisory authority set out in Section 2(11) of the Act. *International*

Center for Integrative Studies, 297 NLRB 601 (1990); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986).

In the instant case, I find that both Green and Linson are statutory supervisors. It is plain from their testimony that both Green and Linson are in charge of their respective crews and they have authority to recommend wage increases for crew members that have been effective. Although they are both working foremen, Green and Linson are responsible for a crew which is away from the Employer's plant most of the time. Both Green and Linson acknowledge that they are in control of the crew, including when it starts and stops work. The record shows that they can permanently remove employees from their crews if they decide that the person poses a safety hazard. Linson also hires employees and has effectively recommended pay rates for new hires. Green has similarly made effective recommendations for pay raises for his crew members. If Green and Linson are not statutory supervisors, then the two crews would be without supervision for most of their work time since they are away from the plant, a situation that does not appear likely.

Also supporting their supervisory status is the fact that they earn more than other crew members and Linson even earns more than do the plant managers. They also have a different health plan, which is the same health plan as that of other managers and supervisors.

For all of these reasons, I find that Green and Linson are statutory supervisors and they are excluded from the unit.

Whether the Petitioned For Unit is an Appropriate Unit. As indicated above, the Petitioner seeks a unit comprised of the welders, riggers and crane operators who regularly work on the Employer's field erection crews. The Employer takes the position that the unit must also include all plant employees.

It is well settled that field construction/installation employees and plant production employees are recognized by the Board as constituting separate appropriate units where the outside and inside workers perform essentially different types of work under separate immediate supervision and interchange is limited. Conversely, where the separation of the community of interest is less distinct, separate units have not been found appropriate. *Carpenters District Council of Miami*, 238 NLRB 1683 (1978); *McCann Steel Company, Inc.*, 179 NLRB 635 (1969), and cases cited therein. Given that the Petitioner does not contend that the petitioned-for employees constitute a craft unit, the issue is whether they constitute a clearly identifiable and functionally distinct group of employees. *Brown & Root, Inc.*, 258 NLRB 1002, 1003 (1981). Thus, the application of the traditional community of interest factors is critical to reaching a determination in such cases.¹¹ Application of the traditional community of interest criteria to the facts of this case yields the following results:

¹¹ The community of interest factors are generally described as follows: the following community of interest factors: (1) differences and/or similarities in wages, compensation and benefits between employees; (2) common or different supervision; (3) similarities and differences between the hours of work of the employees; (4) similarities and differences between the qualifications, training and job skills of employees; (5) a comparison of job functions of employees; (6) the functional integration and interchange among employees; and (7) bargaining history. See *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

First, with regard to the differences in wages, compensation and benefits, the record does not show the pay rate of the plant welders, riggers and crane operators and other plant employees, with the exception of laborers, so there is no way to compare their rates of compensation with those of the crew members. Laborers are paid the same pay rate whether they are working in the plant or working on a jobsite and they earn between \$8 and \$13 an hour, which means that some laborers earn more than Welders McDowell and Lakey, who earn \$12 and \$11 an hour, respectively. Plant employees do not receive a per diem allowance as do crew members. All plant and crew employees receive the same benefits and are subject to the same Employer handbook. Thus, the limited evidence in the record on this factor tends to support a community of interest among the field crew and the plant employees based on the comparable rate of the laborers' to the welders' pay rates and based on the fact that there are common benefits.

Secondly, while the record is not clear as to who supervised the plant employees at the Central Point job,¹² it appears that for the most part, the crew has separate immediate supervision from the plant employees, except during those periods when crew members work in the plant in order to avoid being laid off. At such times, they share the same supervision as plant employees. On the whole, this factor tends to support a finding of a distinct community of interest.

¹² In this regard, Plant Manager Graham testified that he went out to the Central Point job on different occasions to weld and perform "structural fixes," but it is unclear specifically how much he was at the site and whether he was supervising plant employees when he was there. The record reflects that Foremen Linson and Green were otherwise in charge of that project.

Third, crew members work different schedules than do the plant employees. As indicated above, the crew members work four ten-hour days, Monday through Thursday, while the plant employees work five eight-hour days, Monday through Friday. This difference appears to exist even when the crew members work in the plant to avoid a layoff.

With regard to differences and similarities in the qualifications, training, job skills and functions of employees, the crew consists of employees with the same job classifications as those that work in the plant: crane operator, welder and rigger. As shown above, the work of the crane operators and riggers is functionally quite similar regardless of whether they are working on a jobsite or at the plant. For example, plant crane operators load the truck that takes the panels to the jobsite and the plant operator on the crew unloads the same panels at the jobsite. In this regard, Plant Manager Graham's testimony that plant Crane Operator Danny Boban could operate a crane at a jobsite if the Employer needed him to do so supports the similarity of skills between crane operators at both locations.

The riggers at both the plant and the jobsite are strapping the same panels to ensure the crane can put them where they are supposed to go.

The work of the welders does differ to some extent, based on the fact that most plant welding work is apparently rebar welding and most field work is fillet welding. However, plant welders have performed welding at jobsites and vice versa and both have performed finish work at the plant and on jobsites. Thus, while the certifications possessed may differ based on the type of welding work being done or the type of crane being operated, the record supports

that the Employer uses its welders to perform different types of welding work as the need arises.

In addition, laborers and other plant employees perform the same finishing work on jobsites and at the plant as is regularly performed by the crew members. In this regard, it is notable that while the Employer at times has hired people with experience welding, rigging or operating a crane, it does not adhere to a formal training or apprenticeship program. Employees learn on the job to perform the various tasks required in the plant and in the field.

With regard to functional integration, the record shows that the Employer has a highly integrated operation. The evidence regarding the use of the Employer's workforce on the Central Point project, as well as other jobs, supports this conclusion. The Employer's total production and erection crew workforce is not much greater than about forty employees. Although Central Point was a single job, it was a significant project for the Employer that was located at some distance from the Employer's plant and lasted for a lengthy period of time. During that period, and despite the distance, the Employer sent a significant number of its employees to the site to repair the mistakes made in its panel design. Thus, the Central Point situation illustrates that the Employer's workforce is utilized in a flexible integrated manner in order to get the job done. In addition, as discussed above, the record shows that during the past three years, the Employer has sent a substantial number of plant employees out to do finishing and other work on jobs when the crew must move on to a new project. This again demonstrates the functionally integrated nature of the Employer's operation to produce and

install its product. Likewise, the Employer's use of crew members in the plant to perform plant work when project work is slow also shows that its workforce is functionally integrated.

The record shows that there has been substantial interchange over the past three years. Given the small size of the Employer's workforce, a substantial number of plant employees have been dispatched to work at jobsites to perform finishing work and sometimes welding work. While finishing work may be the least-skilled of the types of work performed by crew members, it is nevertheless work that they perform on a regular basis that is also performed by plant employees on the jobsite.

In addition, the record supports that there is substantial temporary interchange with regard to crew members working in the plant when field work is slow. In this regard, Rigger Keith Peterson has spent significant amounts of time working in the plant. Likewise, Tim McDowell, a welder on the crew, has spent about a month in the past year working in the plant during such slow periods.

With regard to permanent interchange, it appears that certain crew members, such as Crane Operator Mitchell, had worked in the plant operating a crane for about three years before becoming a crane operator on the crew about two years ago. The record also shows that there has been contact among the crew and plant employees when plant employees are sent to a jobsite and when crew members work in the plant. In sum, there is substantial evidence of interchange.

Lastly, there is no history of collective bargaining.

Based on a careful consideration of all the foregoing factors, on balance I find that the petitioned-for unit is not an appropriate unit. While the crew members are generally separately supervised and work away from the plant and have distinct hours, I find that the evidence of common job classifications and similar work functions; the high degree of functional integration; the high rate of interchange; and the fact that the field and plant workers have the same benefits and work under the same work rules, establishes that the crew members are not “a clearly identifiable and functionally distinct group of employees.” For this reason, I find that both the crew and plant employees must be included in the unit in order for it to be an appropriate unit.

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Accordingly, an election shall be directed in the following unit:

All full-time and regular part-time crane operators, machine operators, welders, leadpersons, rigging employees, cement finishers, fab-mold employees, mold set-up employees, quality control employees and laborer employees employed by the Employer at its Redding, California facility; and excluding all managerial employees, the general manager, plant managers, the quality control manager, erection crew foremen, office clerical employees, sales employees, guards and supervisors as defined in the Act.

¹³ As the unit found appropriate is larger than that initially requested, Petitioner is accorded a period of 14 days in which to submit the requisite showing of interest to support an election. If Petitioner does not wish to proceed with an election, it may withdraw its petition without prejudice by notice to the undersigned within 7 days from the date of this decision.

DIRECTION OF ELECTION ¹⁴

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are all employees in the unit (1) if they have been employed for 30 working days or more within the twelve months preceding the eligibility date for the election, or (2) if they have had some employment in those twelve months and have been employed for 45 working days or more within the twenty-four month period immediately preceding the eligibility date. Also eligible are employees engaged in an economic strike which commenced less than twelve months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period or prior to the completion of the last job for which they were employed, employees engaged in a

¹⁴ The record does not disclose any evidence regarding what eligibility formula is to be used for purposes of an election. Accordingly, the *Daniel* eligibility formula (as set forth in *Daniel Construction Company, Inc.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), which is generally applicable in all construction industry elections, should be applied in this case. In *Steiny and Company*, 308 NLRB 1323 (1992), the Board held that the *Daniel* formula is applicable to all construction industry elections -- regardless of whether the employer hires on a project-by-project basis or has a stable group of employees. Accordingly, as it is clear from the record that the Employer is a construction industry employer and the parties have not stipulated to the use of another formula, it is concluded that the *Daniel* formula, as modified by *Steiny and Company*, is properly applied in this case.

strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than twelve months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRONWORKERS, MACHINERY MOVERS & RIGGERS LOCAL 118, AFL-CIO

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with *them*. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Region 20 Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103-1735, on or before October 24, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 31, 2003.

DATED at San Francisco, California, this 17th day of October 2003.

/s/ Robert H. Miller
Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

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